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ARIZONA ATTORNEY GENERAL

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STATE CAPITOL
PHOENIX, ARIZONA

August 6, 1974

DEPARTMENT OF LAW OPINION NO. 74-14 (R-31)

REQUESTED BY: ANDREW L. BETTWY
Arizona State Land Commissioner

- QUESTIONS:
1. Is an Arizona corporation qualified to hold a lease on state land if the corporation is controlled by an alien stockholder?
 2. Is an Arizona corporation qualified to hold a lease on state land if the corporation has stockholders who are aliens but who do not, in the aggregate, hold a controlling interest?

- ANSWERS:
1. No.
 2. Yes.

The statutory provisions applicable to these questions are A.R.S. §§ 33-1202 and 37-240.

§ 33-1202. Acquisition of property by corporation having alien stockholders; membership of alien in organizations authorized to acquire property

A. Any association or corporation organized under the laws of this or any other state or nation of which a majority of the members are aliens ineligible to citizenship, or in which a majority of the issued capital stock is owned by such aliens, may acquire, possess, enjoy and convey real property, or an interest therein, only to the extent and for the purposes prescribed by a treaty existing between the United States and the nation or country of which such members or stockholders are citizens or subjects, and not otherwise.

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B. Aliens ineligible to citizenship may become members of or acquire shares of stock in an association or corporation which is or may be authorized to acquire, possess, enjoy or convey agricultural land, only to the extent and for the purposes prescribed by a treaty existing between the United States and the nation or country of which the alien is a citizen or subject, and not otherwise.

§ 37-240. Limitations on amount of land one person may purchase; persons ineligible to purchase or lease state lands

A. No person may purchase more than six hundred forty acres of grazing land, or more than one hundred sixty acres of land susceptible of immediate use for agricultural purposes.

B. No sales, leases or subleases of state lands shall be made to persons who are not or who have not declared their intention to become citizens of the United States, nor to corporations or associations not qualified to transact business in the state.

The Arizona Alien Land Law is codified in A.R.S. § 33-1201, et seq. The apparent intention of this legislation might be gleaned from an expression of the United States Supreme Court in Terrace v. Thompson, 263 U.S. 197, 44 S.Ct. 15, 68 L.Ed. 255 (1923). In that action a provision of the alien land law of the State of Washington was challenged as a violation of the equal protection clause of the Fourteenth Amendment because it distinguished between aliens who declared an intention to become United States citizens and those who did not. Adopting the words of the court below, the Court said:

"It is obvious that one who is not a citizen and cannot become one lacks an interest in, and the very power to effectually work for the welfare of, the

state, and so lacking, the state may rightfully deny him the right to own and lease real estate within its boundaries. If one incapable of citizenship may lease or own real estate, it is within the realm of possibility that every foot of land within the state might pass to the ownership or possession of noncitizens."

263 U.S. at 220,
44 S.Ct. at 20.

Our alien land law, adopted in 1921 (Chapter 28, Regular Session) is practically a rescript of the California alien land law as originally passed in that state. Takiguchi v. State of Arizona, 47 Ariz. 302, 55 P.2d 802, 805 (1936). Relying upon the authority of Porterfield v. Webb, 195 Cal. 71, 231 P. 554 (1924), wherein the California Supreme Court upheld the constitutionality of the California alien land law, the Arizona Supreme Court in Takiguchi, supra, said:

. . . [i]t must not be thought that our law against ineligible aliens owning, possessing and enjoying agricultural lands, or any interest therein, can be ignored or by subterfuge evaded. These alien land laws do not offend any clause or provision of the state or federal Constitutions. . . .

47 Ariz. at 310.

The first question presented herein is clearly controlled by A.R.S. §§ 37-240.B and 33-1202.A. Under A.R.S. § 33-1202.A in the absence of a treaty between the United States and a foreign country, a corporation in which a majority of the shareholders are ineligible to citizenship is prohibited from acquiring real property interests in Arizona. A.R.S. § 33-1202.B imposes even a greater restriction on aliens ineligible to citizenship from holding agricultural land, providing that such aliens may only hold agricultural

land directly or through a corporation if a treaty so provides. In addition thereto, A.R.S. § 37-240.B specifically prohibits aliens who have not declared an intention to become United States citizens from acquiring any interest in state school trust land. Thus, it appears that while A.R.S. § 37-240.B does not permit aliens who have not declared their intention to become citizens of the United States to acquire state school trust land, the statute does not address itself to the question of whether a corporation controlled by aliens ineligible to citizenship, but otherwise qualified to do business in the state may acquire state school trust lands either by purchase or lease. The answer to this issue must be obtained by applying the provisions of A.R.S. § 33-1202.A to A.R.S. § 37-240.B.

The fact that A.R.S. § 37-240.B refers to alien "persons" rather than to "corporations with alien shareholders" which is the subject matter of A.R.S. § 33-1202, does not prevent the operation of A.R.S. § 33-1202.B in this instance. Courts will not interpret statutes in a way which makes them contradictory to each other but must, if sound reason and good conscience allow, construe statutes in harmony. City of Mesa v. Salt River Project Agr. Imp. & Power Dist., 92 Ariz. 91, 373 P.2d 722, appeal dismissed 372 U.S. 704, 83 S.Ct. 1018, 10 L.Ed. 2d.124(1962). Different statutes bearing on the same subject should be construed, if possible, so as to give effect to all. Arizona Corporation Comm'n v. Catalina Foothills Estates, 78 Ariz. 245, 278 P.2d 427 (1958).

While A.R.S. § 10-121 permits any number of persons to associate together to become incorporated and we recognize that a foreign corporation may qualify to do business in Arizona, it nevertheless would obviously be in direct contravention of A.R.S. § 33-1202 to permit aliens who have not declared their intention to become United States citizens to accomplish conduct prohibited by A.R.S. § 33-1202 by simply forming a corporation and acquiring school trust lands under A.R.S. § 37-240. A.R.S. §§ 27-240.B and 33-1202 may be harmonized without straining the language of either, and therefore both must be considered as being operative. The restrictions of A.R.S. § 33-1202.A prohibiting corporations controlled by aliens ineligible to citizenship from acquiring land in Arizona and A.R.S. § 33-1202.B

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which prohibits corporations owned by any aliens ineligible to citizenship from acquiring agricultural interest apply equally to such corporations acquiring an interest in state school trust lands under A.R.S. § 37-240.

In response to the second question the statutes in question both equally apply. A.R.S. § 37-240 provides no specific restrictions on a corporation holding school trust lands so long as the corporation is qualified to do business in the State. However, A.R.S. § 33-1202 does provide specific restrictions on alien-owned corporations holding land, to-wit: a corporation which is owned in part, but not controlled by aliens ineligible to citizenship, may acquire land in Arizona except that such corporation may not acquire any interest in agricultural land in Arizona.

Our Supreme Court has long held that in construing different statutes dealing with similar subject matter, effect should be given to all such statutes if at all possible. City of Scottsdale v. McDowell Mountain Irr. & D. Dist., 107 Ariz. 117, 483 P.2d 532 (1971). Construing A.R.S. § 33-1202 with A.R.S. § 37-240.B, it is logical to conclude that a corporation which is not controlled by the aggregated interests of alien shareholders may acquire through lease or purchase any state trust lands except agricultural lands, unless otherwise authorized by treaty. It appears this interpretation accomplishes the stated goal of statutory construction giving effect to all provisions of both statutes. It should be pointed out that once a sale of school trust land has been made to a corporation in which a minority of stockholders are aliens, a subsequent change in corporate ownership or a transfer to an alien or to a corporation controlled by aliens ineligible to citizenship would be prohibited by A.R.S. § 33-1202.A.

There is a noticable trend in the decisions of the United States Supreme Court which imply that statutes such as A.R.S. §§ 33-1202 and 37-240.B constitute a violation of the Fourteenth Amendment. See Graham v. Richardson, 403 U.S. 365, 91 S.Ct. 1848, 29 L.Ed.2d 534 (1971); Oyama v. California, 332 U.S. 633, 68 S.Ct. 269, 92 L.Ed. 249 (1946); Takahashi v. Fish and Game Comm'n, 334 U.S. 410, 68 S.Ct. 1138, 92 L. Ed. 478 (1948). The California Supreme Court has expressly held

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that the California alien land law violates the equal protection clause of the Fourteenth Amendment. Sei Fujii v. State, 38 Cal.2d 718, 242 P.2d 617 (1952), and Haruye Masaoka v. People, 39 Cal.2d 883, 245 P.2d 1062 (1952). Consistent with this trend, opinions have been submitted by this office which recognize the expansion of the equal protection clause of the Fourteenth Amendment to include noncitizen aliens (e.g., Attorney General's Opinions Nos. 73-19 and 74-7-L). While we acknowledge the existence of the present trend, it is nevertheless well settled in Arizona that there is a presumption in favor of the constitutionality of the legislative enactment. State v. Krug, 96 Ariz. 225, 393 P.2d 916 (1964).

Our opinion therefore is that under A.R.S. §§ 37-240 and 33-1202, a corporation controlled by alien shareholders ineligible to citizenship cannot presently lease state lands. However, corporations with alien shareholders who do not in the aggregate control the same are eligible to hold state land leases subject to the exception that they may not hold agricultural lands.

We note that the foregoing conclusion would not be valid if a domestic corporation controlled by alien shareholders acquired real property interests, including agricultural land, under rights established by a treaty. A.R.S. § 33-1202 indicates that corporations controlled by aliens ineligible to citizenship may acquire real property interests "to the extent and for the purposes prescribed by a treaty existing between the United States and the nation or country of which such members or stockholders are citizens or subjects, and not otherwise."

Respectfully submitted,

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